

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
_____)	

**REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC/Commission) Rules 1.415 and 1.419,² hereby provides reply comments on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board)³ concerning the definition of services supported by the federal universal service program pursuant to Section 254 of the Communications Act of 1934, as amended (the Act).⁴ For the reasons set forth below, USTA concurs with the Joint Board's conclusions in the Recommended Decision as to those services that it expressly rejected for addition to the list of supported universal services.

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 03J-2, Recommended Decision (rel. Apr. 2, 2003) (Recommended Decision).

⁴ 47 U.S.C. § 254. Section 254(c) of the Act requires that four statutory criteria must be considered before additional services can be added to the list of those services supported under Section 254. The criteria requires consideration of whether services to be added: "(a) are essential to education, public health, or public safety; (b) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (c) are being deployed in public telecommunications networks by telecommunications carriers; and (d) are consistent with the public interest, convenience, and necessity.

DISCUSSION

USTA agrees with Verizon that the Joint Board's Recommended Decision reflects careful consideration of the statutory requirements contained in section 254(c) of the Act and that the inclusion of these services in the definition of universal service would not be in the public interest.⁵ USTA agrees with the Joint Board and the majority of commenters in this proceeding that advanced services, soft dailtone, intrastate toll, interstate toll, expanded area service, and pre-paid calling plans should not be added to the list of services supported by the federal universal service program.⁶ USTA also agrees with the majority of commenters in this proceeding that equal access should not be added to list of supported universal services.⁷

Moreover, USTA contends that the FCC should adopt the Joint Board's recommendation wholesale and reject commenters in this proceeding who expressly seek the addition of soft dial tone, unlimited local usage, and technical and service quality standards to the definition of universal service. In addition, the FCC should not re-evaluate whether non-primary residential lines and multiple business lines should be subsidized by universal service support mechanisms in this proceeding.

Soft Dial Tone

In its comments, the United States Conference of Catholic Bishops, *et al.* has strongly urged the FCC to reconsider the Joint Board's finding that soft dial tone should not be a supported universal

⁵ Comments of Verizon at 1.

⁶ See generally Comments of Verizon, Western Wireless, Cellular Telecommunications and Internet Association, Nextel, Dobson Communications Corporation, Sprint Corporation, Rural Cellular Association, Centennial Communications Corporation, Florida Public service Commission, U.S. Cellular Corporation, New York Department of Public Service, Verizon Wireless, SBC Communications, Inc. and the Competitive Universal Service Coalition.

⁷ *Id.*

service.⁸ The United States Conference of Catholic Bishops, *et al.* believes that the Joint Board's Recommended Decision is "misguided."⁹ In addition, the United States Conference of Catholic Bishops, *et al.*, contend that: those who have had their service cut-off should still retain access to emergency services; only a few states have soft dial tone service and this does not mean that others states will adopt the service; and leaving this issue to the states as to whether to require "soft dial tone will result in confusion and inconsistency."¹⁰ USTA disagrees, and supports the Joint Board's Recommended Decision that soft dial tone should not be a supported universal service.¹¹

Soft dial tone or warm line allows a disconnected line to contact emergency service (911) and the local exchange carrier's central office.¹² According to the United States Conference of Catholic Bishops, *et al.*, the Joint Board recommended against including soft dial tone for three main reasons.

First, noting that several states, including California, Vermont, and New York had already implemented successful soft dial tone programs, it concluded that states "may be in the best position to determine whether soft dial tone or soft dial tone in necessary and to establish attendant programs." Second, the Joint Board found that the record was "unclear" regarding the impact that supporting this service would have on the size of USF. Finally, it was concerned that the inclusion of soft dial tone "might be inconsistent with the principle of competitive neutrality."¹³

The United States Conference of Catholic Bishops, *et al.*, however, has failed to address the Joint Board's concern that soft dial tone "may not be a telecommunications service subscribed to by

⁸ Comments of the United States Conference of Catholic Bishops, Alliance for Community Media, Appalachian People's Action Coalition, Center for Digital Democracy, The Community Technology Institute, Consumer Action, Consumer Federation of America, Consumers Union, Edgemont Neighborhood Coalition, The Migrant Legal Action Program, The National Coalition for the Homeless, and the National Community Voice Mail Federation at 4 (United States Conference of Catholic Bishops, *et al.*).

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ Recommended Decision at ¶ 28.

¹² *Id.* at ¶ 27.

¹³ See United States Conference of Catholic Bishops, *et al.* 4-5 (citing the Recommended Decision at ¶¶ 28-31).

residential consumers.”¹⁴ The Joint Board was not compelled to address this issue because of the other overwhelming reasons not to include soft dial tone as a supported universal service.¹⁵

USTA believes that any further review of the Joint Board’s decision regarding soft dial tone may require the FCC to address whether soft dial tone is a telecommunications service. In the case of that eventuality, USTA agrees with SBC Communications, Inc. (SBC) that soft dial tone is not a telecommunications service and should not be added to the list of supported universal services. As USTA’s initial comments in this proceeding state: “[a]n offering must first be a ‘telecommunications service,’ pursuant to section 254(c)(1), in order to qualify for inclusion as a supported universal service.”¹⁶ We concur with SBC that soft dial tone “does not meet the statutory definition of a ‘telecommunications service,’ which is defined as ‘the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”¹⁷

Soft dial tone does not qualify as a telecommunications service because it is not offered for a fee directly to the public and is not made directly available to classes of users on a wide basis.¹⁸ In addition, USTA concurs with SBC that “there is no established relationship between the LEC and the end user; [and] the carrier realistically cannot charge an end user a fee for using SDTWL (soft dial tone or warm line).”¹⁹ Finally, USTA concurs with SBC that it is not in the public interest to add soft dial tone to the list of supported services.²⁰

¹⁴ Recommended Decision at ¶ 32.

¹⁵ *Id.*

¹⁶ Comments of the United States Telecom Association, *Federal State Joint Board on Universal Service*, FCC 01-J-1 (filed on Nov. 5, 2001) (USTA Initial Comments).

¹⁷ See Comments of SBC Communications, Inc. at 8 (citing 47 U.S.C. § 153(46))(SBC).

¹⁸ USTA Initial Comments at 5.

¹⁹ SBC at 8.

²⁰ *Id.*

Unlimited Local Usage

In their comments, The National Association of State Utility Consumer Advocates (NASUCA) and the Montana Universal Service Task Force (MUST)²¹ reargue their previous assertions in this proceeding that local usage should be added to list of supported universal services.²² Both NASUCA and MUST contend that local usage should be defined as unlimited local calling for a flat fee.²³ USTA disagrees, and concurs with the Joint Board's recommendation that unlimited local usage should not be added to the list of supported universal services.²⁴

In the First Report and Order, the FCC and the Joint Board agreed that eligible telecommunications carriers (ETCs) should provide a minimum amount of local usage as part of a basic service package of supported services.²⁵ In subsequent notices of proposed rulemaking, the FCC sought comment on the minimum amount of local usage that should be included in the basic service package and how to determine the amount.²⁶ "Although the Commission's rules define 'local

²¹ The Montana Universal Service Task Force (MUST) is a group of telecommunications companies that include the Montana Independent Telecommunications Systems, Valley Telecommunications, Triangle Telephone Cooperative Association, Project Telephone Company, Northern Telephone Cooperative, Nemont Telephone Cooperative, Central Montana Communications, 3 Rivers Telephone Cooperative, Inc., InterBel Telephone Cooperative Inc., Blackfoot Telephone Cooperative and CC Communications.

²² See Comments of The National Association of State Utility Consumer Advocates at 4 (NASUCA); Comments of MUST at 7 (MUST).

²³ *Id.*

²⁴ Recommended Decision at ¶ 43.

²⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report & Order., 12 FCC Rcd 8776, 8813, ¶ 67 (1997) (First Report and Order).

²⁶ *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 96-45 and 97-160, Further Notice of Proposed Rulemaking, 12 FCC Rcd 18514 (1997); *Federal-State Joint Board on Universal Service*, CC Docket no. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998).

usage’ as ‘an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users,’ the Commission has not specified a number of minutes of use.”²⁷

USTA agrees with the Joint Board that “mandating unlimited local usage as a requirement for ETC status would not be in the public interest.”²⁸ The Joint Board makes a particularly significant point that “[s]ome states, . . . , may require or encourage local metered pricing for local service because it may, for example, encourage subscribership among low-income or low-volume customers.”²⁹ In addition, USTA believes that an unlimited local usage requirement may create an impediment to offering basic service packages for low-income or low-volume customers in high cost areas supported by universal service. We agree with the Joint Board that if it imposed a federal unlimited local usage requirement, it could, in effect, force carriers to forgo ETC status in order to meet a state requirement of offering metered pricing.³⁰ Thus, USTA agrees with the Joint Board that unlimited local usage should not be added to the list of supported universal services.

Technical and Service Quality Standards

MUST resurrects its previous arguments to the Joint Board and asks that the FCC reverse its “decision and add technical and service quality standards to the definition of universal service.”³¹ In addition, MUST contends that the FCC “should clarify that states are free to impose their technical and service quality standards as part of the definition of universal service and as prerequisites to eligibility for universal service funding.”³² Moreover, MUST believes that the FCC should “create

²⁷ See Recommended Decision at ¶ 41 (citing 47 C.F.R. §54.101(a)(2)).

²⁸ *Id.* at ¶ 43.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at ¶ 62; MUST at 8.

³² MUST at 4.

its own technical and service quality standards, at a minimum to govern instances where a state lacks jurisdiction.”³³

In the First Report and Order, the FCC relied on section 253 of the Act³⁴ in declining to establish federal technical or service quality standards as a condition for receiving universal service support.³⁵ Rather, the FCC concluded that it would rely on the service quality data that it received from the states in combination with the data it collects to monitor state service quality trends.³⁶ In the Recommended Decision, the Joint Board correctly reaffirmed the FCC’s determination and found that there was insufficient justification to recommend that the FCC develop federal technical standards. The rationale that the FCC and the Joint Board applied in reaching this conclusion is as applicable today as it was when it was rendered in the First Report and Order. Thus, USTA concurs with the Joint Board that the FCC should not add federal technical or service quality standards as a condition to receive universal service support.³⁷

Further, any universal service fund requirements must go through the Joint Board process before adoption and implementation.³⁸ The FCC cannot delegate to states the authority to impose requirements as a precondition to the receipt of universal service support. The Joint Board has correctly concluded that federal technical or service quality standards should not be a condition to receiving universal service support.

³³ *Id.*

³⁴ 47 U.S.C § 253.

³⁵ Recommended Decision at ¶ 60 (citing the First Report and Order, 12 FCC Rcd at 8831-8833).

³⁶ *Id.*

³⁷ Recommended Decision at ¶ 63.

³⁸ 47 U.S.C. § 254 (a)(1), (c)(2).

The Definition of Universal Service Should Include All Lines

SBC asks that the FCC re-evaluate whether the definition of universal service should include non-primary residential lines and services.³⁹ The FCC's current rules allow for support of all lines. USTA believes that the elimination of universal service support for all lines of qualifying carriers would harm residential and business customers in high-cost areas.

Limiting universal service support to single lines would violate the principles of section 254(b) of the Act by denying rural business and residential consumers access to services and rates that are reasonably comparable to those of their urban counterparts. In addition, limiting support would increase the costs of doing business for many small businesses, which is likely to discourage many businesses from locating in high-cost areas. In other words, the higher the costs are of doing business in high-cost areas, the greater the disincentive will be for businesses to invest in those areas. Limiting support to a single connection would also mean ILECs would have to try to determine whether residences have multiple connections, which would increase their administrative burdens considerably and may not be operationally feasible. Finally, if their support were eliminated, ILECs would have little incentive to install sufficient facilities to accommodate second lines.

Moreover, USTA believes that the FCC should look at each of the universal service dockets in a coordinated manner. The Commission is currently addressing this issue in the high cost support and eligible telecommunications carrier designation process proceeding,⁴⁰ which USTA believes is the more appropriate proceeding to address whether the FCC should reconsider its current rules that allow for the support of all lines in high-cost areas served by rural carriers.

³⁹ SBC at 9.

⁴⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02-307 (Nov. 8, 2002).

CONCLUSION

For the reasons set forth above, USTA supports the retention of the existing list of core supported universal services. USTA opposes the expansion of the list at this time to include any new supported universal services.

Respectfully submitted,
UNITED STATES TELECOM ASSOCIATION



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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on April 14, 2003, the aforementioned Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

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